

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-HC-2049-H

UNITED STATES OF AMERICA)	
)	
Petitioner,)	
)	
v.)	MOTION FOR VOLUNTARY
)	DISMISSAL WITH PREJUDICE
)	WITH LEAVE OF COURT
SEYMORE BILAGODY,)	
)	
Respondent.)	

Petitioner the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, hereby moves the Court to voluntarily dismiss, with prejudice, the certification of a sexually dangerous person against Respondent, Seymore Bilagody.

A settlement agreement, subject to the Court's approval, is attached hereto as Exhibit A, which details the manner in which the parties propose that this matter be concluded. Pursuant to the terms of the settlement agreement, the parties jointly request that the Court conduct a hearing to inquire of counsel for the United States, the Respondent, and Respondent's counsel whether each of them personally affirms in open court that the terms and conditions of the settlement agreement have been

entered and undertaken knowingly and voluntarily after having adequate opportunity to seek counsel.

WHEREFORE, Petitioner requests that the Court allow Petitioner to voluntarily dismiss the certification of a sexually dangerous person against Respondent, Seymore Bilagody, with prejudice subject to the above-mentioned terms.

Respectfully submitted, this the 14 day of November, 2011.

THOMAS G. WALKER
United States Attorney

By: /s/ Michael G. James
MICHAEL G. JAMES
Attorney for Petitioner
Assistant United States Attorney
Civil Division
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
E-Mail: mike.james@usdoj.gov
N.Y. Bar No. 2481414

CERTIFICATE OF SERVICE

I do hereby certify that on this 14th day of November 2011,
I have served a copy of the foregoing motion upon counsel for
respondent by CM/ECF addressed to:

Joseph Ross
Assistant Federal Public Defender

/s/ Michael G. James
MICHAEL G. JAMES
Assistant United States Attorney
Attorney for Petitioner
Civil Division
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
E-Mail: mike.james@usdoj.gov
N.Y. Bar No. 2481414

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-HC-2049-H

UNITED STATES OF AMERICA)	
)	
Petitioner,)	
)	PROPOSED ORDER
v.)	
)	
SEYMORE BILAGODY)	
)	
Respondent.)	

The Court has considered Petitioner's Motion for Voluntary Dismissal and the Settlement Agreement entered into between the parties. The United States, the Respondent, and Respondent's counsel have each personally affirmed in open court that the terms and conditions of the settlement agreement have been entered and undertaken knowingly and voluntarily after having adequate opportunity to seek counsel. The Court finds as a fact that the parties knowingly and voluntarily entered into the Settlement Agreement.

IT IS HEREBY ORDERED that pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure and for good cause, this action is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the stay of Respondent's release from Bureau of Prisons custody is lifted, and Respondent is ordered to be released from Bureau of Prisons custody. As set

out in the criminal judgment in the matter of United States America v. Seymore Bilagody, in the United States District Court for the District of Arizona, Docket No. 00-CR-01199-001-PCT-PGR, on December 19, 2001, the Respondent shall report to the probation office in the Northern District of Arizona within 72 hours of his release.

This the ____ day of November, 2011.

MALCOLM J. HOWARD
Senior United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-HC-2049-H

UNITED STATES OF AMERICA,)	
Petitioner,)	
)	
v.)	SETTLEMENT AGREEMENT
)	
SEYMORE BILAGODY,)	
Respondent.)	

Petitioner, the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and Respondent, Seymore Bilagody, by and through his counsel of record, Joseph L. Ross, II., have agreed that this matter should be concluded in accordance with terms and conditions of this agreement as follows:

1. This agreement constitutes the full and complete record of the agreement of this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. Respondent admits and stipulates that the United States lawfully certified Respondent as a sexually dangerous person under the Adam Walsh Act, as codified in 18 U.S.C. § 4248 pursuant to procedures established in 18 U.S.C. § 4248(a) and that said statute was upheld as constitutional in United States v. Comstock, 130 S.Ct. 1949 (2010), and again on remand to the Fourth Circuit of Appeals, in United States v. Comstock, 627 F.3d 513 (4th Cir.

GOVERNMENT
EXHIBIT

A

2010), and that based on the above established procedures his release from imprisonment was stayed on March 6, 2007.

3. Respondent admits and stipulates that the criminal judgment against him in the matter of United States of America v. Seymore Bilagody, in the United States District Court for the District of Arizona, Docket No. 00-CR-01199-001-PCT-PGR, on December 19, 2001, for Aggravated Sexual Abuse, Crime on an Indian Reservation, in violation of 18 U.S.C. §§ 1153 and 2241(c), imposed upon him an 84-month term of imprisonment followed by a five (5) year term of supervised release, and that the judgment ordered that the term of supervised release was to be served "upon release from imprisonment." Respondent admits and stipulates that, by the operation of law defined by 18 U.S.C. § 4248, his "release" from imprisonment was "stayed," and that, consequently, his term of supervised release has not commenced. See e.g. David H. Tobey v. United States, Civil Action No. DKC 10-1358 (Chasanow, Judge) (D. Md.). A copy of the criminal judgment is attached to the proposed motion to dismiss as Exhibit B.

4. Respondent agrees and promises that, in consideration of the United States' agreement to voluntarily dismiss this action with prejudice, he will not collaterally attack the order of supervised release contained in the criminal judgment against him. Respondent's waiver, however, does not prevent the United States

Probation Office in the District of Arizona from seeking early termination of Respondent's term of supervised release.

5. Respondent agrees and promises that, in consideration of the United States' agreement to voluntarily dismiss this action with prejudice, that he will participate in any program for the treatment of alcohol dependence and sex offender treatment that the United States Probation Office in the District of Arizona mandates during his term of supervision. Respondent will be residing at the New Beginnings Treatment Center located in Tucson, Arizona.

6. Petitioner agrees and promises that, in consideration of Respondent's admissions and stipulations set out in Paragraphs 2 through 3 above and Respondent's agreements and promise in Paragraphs 4 and 5 above, the United States will file a motion under Rule 41 of the Federal Rules of Civil Procedure asking the Court to dismiss this action with prejudice and to lift the stay on Respondent's release from imprisonment.

7. Petitioner and Respondent jointly request that the Court conduct a hearing to inquire of counsel for the United States, Respondent, and Respondent's counsel whether each of them personally affirms in open court that the terms and conditions of this settlement agreement have been entered and undertaken knowingly and voluntarily after having had adequate opportunity to seek counsel.

Respectfully submitted on this the 14th day of November,
2011.

THOMAS G. WALKER
UNITED STATES ATTORNEY

BY: Michael G. James
MICHAEL G. JAMES
Assistant U.S. Attorney

Seymore Bilagody
SEYMORE BILAGODY
Respondent
Joseph L. Ross, II.
JOSEPH L. ROSS, II.
Attorney for Respondent

APPROVED, this _____ day of _____, 2011.

MALCOLM J. HOWARD
Senior United States District Judge

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
DEC 19 2001	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY <i>[Signature]</i>	DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America

v.

Seymore Bilagody
P.O. Box 1162
Tuba City, AZ 86045

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

No. CR 00-01199-001-PCT-PGR

Robert McWhirter (Appointed)
Attorney for Defendant

USM#: 48913-008 DOB: [REDACTED] SSN: [REDACTED]

THE DEFENDANT ENTERED A PLEA OF guilty on 7/10/01 to Count TWO of the Indictment.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE: violating Title 18, USC §1153 and 2241(c), Aggravated Sexual Abuse, Crime on an Indian Reservation, Class A felony offense, as charged in Count TWO of the Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is hereby committed to the custody of the Bureau of Prisons for a term of **EIGHTY FOUR (84) MONTHS** on Count TWO. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **FIVE (5) YEARS** on Count TWO. The Court recommends that the defendant be placed in an institution in Arizona and receive any psychological/physiological treatment available.

IT IS FURTHER ORDERED that all remaining counts are **DISMISSED** on motion of the United States.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk, U.S. District Court, Attn: Finance, Suite 130, 401 West Washington St., SPC 1, Phoenix, Arizona 85003-2118, the following total criminal monetary penalties:

SPECIAL ASSESSMENT: \$100 FINE: \$0 RESTITUTION: \$0

Defendant does not have the ability to pay a fine or only has the ability to pay a fine less than the guideline minimum.

All monetary penalties are due immediately or in regular monthly installments. If incarcerated, payments shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Any unpaid balance shall become a condition of supervision and shall be paid within 90 days of the expiration of supervision.

The total special assessment of \$100 shall be paid pursuant to Title 18, United States Code, Section 3013 for Count TWO of the Indictment.

Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address.

**GOVERNMENT
EXHIBIT**

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant is placed on supervised release for a term of **FIVE (5) YEARS** on Count TWO.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

For offenses committed on or after September 13, 1994: The defendant shall refrain from any unlawful use of a controlled substance. Pursuant to 18 USC §3563(a)(4) and 3583(d) the defendant shall submit to one drug test within 15 days of release from imprisonment and such other periodic drug tests thereafter, as directed from time to time by the probation officer.

The defendant shall not possess a firearm, ammunition or other dangerous weapon as defined in 18 U.S.C. §921.

The defendant shall comply with the standard conditions of supervision:

- 1) You shall not commit another federal, state, or local crime during the term of supervision.
- 2) You shall not leave the judicial district or other specified geographic area without the permission of the Court or probation officer.
- 3) You shall report to the Probation Office as directed by the Court or probation officer, and shall submit a truthful and complete written report within the first five days of each month.
- 4) You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 5) You shall support your dependents and meet other family responsibilities.
- 6) You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 7) You shall notify the probation officer at least ten days prior to any change of residence or employment.
- 8) You shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. Possession of controlled substances will result in mandatory revocation of your term of supervision. If ordered by the Court to participate in a drug and/or alcohol abuse treatment program, you shall totally abstain from the use of any alcoholic beverages or other intoxicants during and after the course of your treatment.
- 9) You shall not frequent places where controlled substances are illegally sold, used, distributed or administered, or other places specified by the Court.
- 10) You shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 11) You shall permit a probation officer to visit at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 12) You shall immediately notify the probation officer (within forty-eight (48) hours if during a weekend or on a holiday) of being arrested or questioned by a law enforcement officer.
- 13) You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
- 14) As directed by the probation officer, you shall notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm your compliance with such notification requirement.
- 15) You shall refrain from possessing a firearm, destructive device, or other dangerous weapon. Possession of a firearm will result in mandatory revocation of your term of supervision. This prohibition does not apply to misdemeanor cases unless special condition imposed by Court.
- 16) Unless suspended by the Court, you shall submit to one substance abuse test within the first

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USA vs. Seymore Bilagody

15 days of supervision and at least two periodic substance abuse tests thereafter, pursuant to 18 U.S.C. §§ 3563(a)(4) and 3583(d);

- 17) If supervision follows a term of imprisonment, you shall report in person to the Probation Office in the district to which you are released within seventy-two (72) hours of release.
- 18) The balance of any financial obligation ordered by this Court shall be paid in regular monthly installments approved by the probation officer, the full amount to be paid 90 days prior to expiration of supervision. You will notify the probation officer of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

The defendant shall also comply with the following special conditions:

1. You shall participate as instructed by the probation officer in a program of substance abuse treatment which may include testing for substance abuse. You shall contribute to the cost of treatment in an amount to be determined by the probation officer.
2. You shall submit to search of person, property, vehicles, business, and residence to be conducted in a reasonable manner and at a reasonable time by, or at the direction of, the probation officer.
3. You shall provide the probation officer access to any requested financial information.
4. You shall participate in sex offender treatment as directed by the probation officer and submit to risk assessment including physiological testing which may include, but is not limited to, polygraph, plethysmograph, and/or ABEL Assessment. You shall contribute to the cost of treatment in an amount to be determined by the probation officer.
5. You shall reside in a residence approved, in advance, by the probation officer. Any changes in the residence must be pre-approved by the probation officer.
6. You shall not have contact with children under the age of 16 without prior written permission of the probation officer, and shall report any unauthorized contact immediately to the probation officer.
7. You shall not contact the victim, nor the victim's family without prior permission from the probation officer and the probation officer will verify compliance.
8. You shall not possess any form of pornography, sexually stimulating, or sexually oriented material as deemed inappropriate by the probation officer and/or treatment staff. You shall not enter any location where pornography or erotica can be accessed, obtained, or viewed.
9. You are restricted from engaging in any occupation, business, or profession where you have access to children without prior written permission of the probation officer.
10. You shall register with the state sex offender agency in any state where you reside, are employed, carry on a vocation, or are a student, as directed by the probation officer.
11. You shall maintain an appropriate appearance at all times which includes the wearing of undergarments, and appropriate outer clothing in the home or places where others might view you, or be present.
12. You shall not possess or use a computer with access to any "on-line computer service" at any location (including place of employment) without the prior written approval of the probation officer. This includes any Internet Service provider, bulletin board system or any other public or private network or e-mail system.
13. You shall not utilize any sex-related adult telephone numbers. The probation officer will verify compliance through the submission of personal/business telephone records.
14. You shall abstain from all use of alcohol or alcoholic beverages.

THE DEFENDANT IS ADVISED OF HIS/HER RIGHT TO APPEAL WITHIN 10 DAYS.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

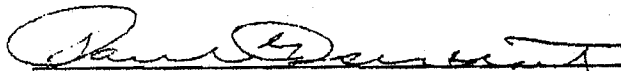
IT IS FURTHER ORDERED that the Clerk of the Court deliver two certified copies of this judgment

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to the United States Marshal of this district.

The Court orders commitment to the custody of the Bureau of Prisons and recommends:
that the defendant be placed in an institution in Arizona

Date of Imposition of Sentence: Monday, December 17, 2001


PAUL G. ROSENBLATT, United States District Judge

Date Dec 18, 2001

RETURN

I have executed this Judgment as follows: _____

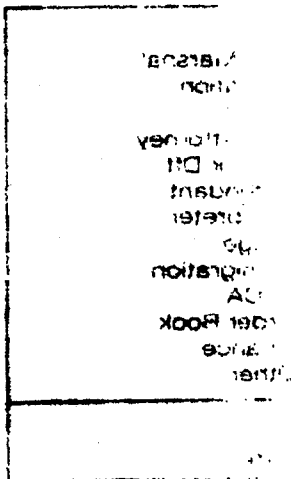
Defendant delivered on _____ to _____ at _____, the institution
designated by the Bureau of Prisons, with a certified copy of this judgment in a Criminal case.

United States Marshal

By: _____
Deputy Marshal

CC: USA/CNSL(Robert McWhirter)/PROB(2)/PTS/FIN/JUDGE/USM(2 certified)/Order Book

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